

# SENATE BILL REPORT

## ESSB 6776

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As Amended by House, March 11, 2008

**Title:** An act relating to state employee whistleblower protection.

**Brief Description:** Modifying state whistleblower protections.

**Sponsors:** Senate Committee on Government Operations & Elections (originally sponsored by Senators Kline, Roach, Fraser, Fairley and Swecker).

**Brief History:**

**Committee Activity:** Government Operations & Elections: 1/29/08, 2/07/08 [DPS-WM].  
Ways & Means: 2/11/08, 2/12/08 [DPS(GO)].  
Passed Senate: 2/18/08, 48-0.

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### SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

**Majority Report:** That Substitute Senate Bill No. 6776 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Fairley, Chair; Oemig, Vice Chair; Roach, Ranking Minority Member; Benton, Kline, McDermott and Pridemore.

**Staff:** Sharon Swanson (786-7447)

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Substitute Senate Bill No. 6776 as recommended by Committee on Government Operations & Elections be substituted therefor, and the substitute bill do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Pridemore, Vice Chair, Operating Budget; Zarelli, Ranking Minority Member; Brandland, Carrell, Hatfield, Hewitt, Hobbs, Honeyford, Keiser, Kohl-Welles, Oemig, Parlette, Rasmussen, Regala, Roach, Rockefeller and Schoesler.

**Staff:** Steve Jones (786-7440)

**Background:** The state whistle blower protection program was established to encourage state employees to disclose improper governmental action and to provide protection to employees who report improper action.

The Washington Human Rights Commission (WSHRC) enforces the Washington Law Against Discrimination (WLAD). WLAD prohibits employment discrimination on the basis of race, color, national origin, sex, sexual orientation/gender identity, disability, age, creed/

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religion, marital status, HIV/AIDS or Hepatitis C status, retaliation, and Whistleblower Retaliation. WSHRC has jurisdiction over most employers with eight or more employees.

A whistle blower is defined as any state employee who in good faith reports alleged improper governmental action to the auditor, initiating an investigation.

Currently, improper governmental action is defined as any action by an employee undertaken in the performance of the employee's official duties which is a gross waste of public funds, is in violation of federal or state law or rule, or which is of substantial and specific danger to the public health or safety.

**Summary of Engrossed Substitute Bill:** Definitions for abuse of authority, gross mismanagement, and public official are added to the whistle blower protection act.

The definition of improper governmental action is amended to include any action by an employee undertaken in the performance of the employee's official duties which prevents the dissemination of scientific opinion or alters technical findings without scientifically valid justification, unless disclosure is prohibited by state law or common law privilege.

The definition of reprisal or retaliatory action is expanded.

A public official means the Attorney General (AG) or the AG's designee or designees; the director is equivalent in the agency where an employee works; or the Executive Ethics Board.

The definition of whistle blower is expanded to include an individual who in good faith reports or is perceived by the employer as reporting alleged improper governmental action to the State Auditor or public official, initiating an investigation.

The auditor has the sole authority to investigate reports of improper governmental activities made by whistle blowers to any public official. Any public official receiving a report must submit a record of that to the auditor within 15 business days of receiving it.

The period of time that the auditor has to conduct a preliminary investigation is expanded from 30 days to 60 days.

Individuals are not authorized under the Whistleblower act to disclose information otherwise prohibited by law, except to the extent that information is necessary to substantiate the whistleblower complaint, in which case information may be disclosed to the auditor or public official by the whistleblower for the limited purpose of providing information related to the complaint.

The identity of any person who, in good faith, provides information in a whistleblower investigation is confidential at all times unless the person consents to disclosure in writing or by acknowledging his or her identity as a witness who provides information in an investigation.

Governmental employees must be provided annual notice of their rights under the whistle blower protection act. Such reminders may be in agency internal newsletters, notices included in paychecks, email notices, or other such means that are both cost effective and reach all employees of the agency, division, or subdivision.

If WSHRC has not issued a final decision on the alleged whistle blower retaliation within 180 days or within 90 days that WSHRC denied the requested relief in whole or in part, the complainant may seek injunctive or final relief for the complaint by filing an action in superior court seeking a review of the complaint.

In lieu of filing a complaint for retaliation with the Human Rights Commission, a complainant may pursue arbitration conducted by the American Arbitration Association or another arbitrator mutually agreed upon by the parties. The cost must be shared equally by the parties.

On or before the third Monday in January of each year, the Human Rights Commission must report to the Governor and Legislature: 1) the number of retaliation reports it has received in the past year; 2) the number of such reports which were substantiated; 3) and the number of such cases still under consideration as well as how long each unresolved case has been under consideration.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill (Government Operations & Elections):** PRO: Employees need protection. Expansion of the whistleblower program is a good thing for public employees. This bill is about government accountability and transparency. An employee who finds corruption or illegal behavior should feel confident and protected as they come forward. This bill helps protect employees who may find themselves in this unfortunate position. Those who report wrong doing should be protected. The burden shifting in the bill only kicks in when the employee can show retaliation. The increased burden is on the employer, not the individual.

CON: This bill is a significant expansion of the whistleblower act. Whistleblowers are confidential and no one knows who is the whistleblower is. An expansion to a person who has reported, is about to report, or is perceived to report an act makes investigations difficult. This impacts the definition of who a whistleblower is. Some of the terms added to improper governmental action are subjective and may make it difficult for a supervisor to hold an employee accountable. The use of the term "hostile work environment" is vague. There is a difference as to how a represented employee and an unrepresented employee is treated by an administrative law judge.

**Persons Testifying:** PRO: Tom Carpenter, Government Account Project; Matt Zuvich, Washington Federation of State Employees; Drea Treauer, Washington Federation of State Employees; Linda Long, State Auditor's Office; Polly Zehm, Department of Ecology.

CON: Lisa Sutton, Attorney General's Office.

**Staff Summary of Public Testimony on Substitute Bill (Ways & Means):** Same as the Government Operations & Elections Committee testimony (see above).

**Persons Testifying (Ways & Means):** PRO: Tom Carpenter, Bob Cooper, Government Accountability Project; Matt Zuvich, Washington Federation of State Employees; Drea Treauer, Washington Federation of State Employees; Linda Long, State Auditor's Office; Polly Zehm, Department of Ecology.

CON: Lisa Sutton, Attorney General's Office.

**House Amendment(s):** Makes a grammatical change to the definition of "good faith". Adds the director, or equivalent, in the agency where the employee works to the definition of "public official" for the purposes of making a whistleblower report.